

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DAVID LEE WHITE,  
Petitioner,  
vs.  
D. K. SISTO, Warden,  
Respondent.

No. C 08-2002 TEH (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND, GRANTING  
MOTION AND INSTRUCTIONS TO  
THE CLERK**

(Docket No. 3)

**INTRODUCTION**

Petitioner, a prisoner of the State of California, currently incarcerated at California State Prison-Solano in Vacaville, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 apparently challenging the constitutional validity of his state conviction. Petitioner has also filed a motion seeking leave to proceed in forma pauperis (docket no. 3), which is now GRANTED. This order directs Respondent to show cause why the petition should not be granted.

**BACKGROUND**

Petitioner is apparently attempting to file a habeas petition, alleging ineffective assistance of counsel on a case where he contends he pled unknowingly to a 30 years-to-life sentence in state prison, by signing an empty plea form about which the terms of his attorney mislead him. Petitioner filed his habeas petition in this Court on April 17, 2008. However, because Petitioner has only provided the Court with a two page hand-written

document and has not filled out the Court's form habeas petition, he has failed to file his petition with enough detail for the Court to determine whether an order to show cause should issue. As such, the petition is dismissed with leave to file an amended petition within thirty (30) days.

## DISCUSSION

### I Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." *Id.* § 2243.

Habeas corpus petitions must meet heightened pleading requirements. McFarland v. Scott, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must "specify all the grounds for relief which are available to the petitioner ... and shall set forth in summary form the facts supporting each of the grounds thus specified." Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. "[N]otice' pleading is not sufficient, for the petition is expected to state facts that point to a 'real possibility of constitutional error.'" Rule 4 Advisory Committee Notes (quoting Aubut v. Maine, 431 F.2d 688, 689 (1st Cir. 1970). "Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal." Calderon v. United States Dist. Court (Nicolaus), 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

### II Petitioner's Claim

The petition alleges that Petitioner suffered ineffective assistance of counsel. However, Petitioner has not completed the Court's form petition and has failed to

1 provide the Court with the basic information necessary to review the claims, all  
2 information which Petitioner can provide the Court by filling out a standard prisoner  
3 habeas form. Therefore, the Court now dismisses the petition. However, Petitioner will  
4 be provided with thirty (30) days in which to file an amended petition on the Court's  
5 prisoner habeas form.

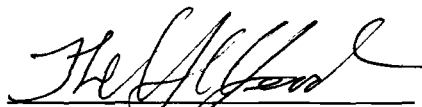
### 6 CONCLUSION

7 For the foregoing reasons and for good cause shown, this action is dismissed with  
8 leave to file an amended petition within **thirty (30) days** of the date of this order in  
9 which Petitioner presents only claims for violations of his rights under the laws, treaties,  
10 or Constitution of the United States. Each and every such claim must have been  
11 presented to the California Supreme Court before it may be asserted in a federal habeas  
12 action. The amended petition must contain the caption and civil case number used in this  
13 order and the words AMENDED PETITION on the first page. Failure to file an  
14 amended petition by the deadline will result in dismissal of this action. The Court Clerk  
15 is ordered to provide Petitioner with a copy of the Court's habeas petition form along  
16 with this order.

17 It is Petitioner's responsibility to prosecute this case. He must keep the Court  
18 informed of any change of address by filing a separate paper with the clerk headed  
19 "Notice of Change of Address." He must comply with any orders of the Court within the  
20 time allowed, or ask for an extension of that time. Failure to do so may result in the  
21 dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil  
22 Procedure 41(b). See Martinez v. Johnson, 104 F.3d 769, 772 (5th Cir. 1997) (Rule  
23 41(b) applicable in habeas cases).

24 SO ORDERED.

25 DATED: 10/8/08

26   
27 THELTON E. HENDERSON  
28 United States District Judge